

## HOUSE BILL NO. 475

INTRODUCED BY PHILLIPS

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO ELECTRONIC-FORMAT RULES AND RULEMAKING NOTICES, ELECTRONIC RULEMAKING SERVICES, AND FEES FOR THOSE RULES, NOTICES, AND SERVICES CHARGED BY THE SECRETARY OF STATE; AND AMENDING SECTIONS 2-4-305, 2-4-306, 2-4-311, AND 2-4-313, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-4-305, MCA, is amended to read:

**"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) The agency shall fully consider written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is ~~printed~~ published in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and

specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules. An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records."

**Section 2.** Section 2-4-306, MCA, is amended to read:

**"2-4-306. Filing, and format, ~~and~~ -- adoption and effective dates -- dissemination of emergency rules.** (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the printed or electronic format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter and the secretary of state's rules. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule if the rule is adopted by the agency.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date

1 following publication in the register; and

2 (ii) an emergency rule is effective at a stated date following publication in the register or immediately upon  
3 filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril  
4 to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must  
5 be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and  
6 extraordinary measures to make emergency rules known to each person who may be affected by them.

7 (c) if, following written administrative rule review committee notification to an agency under 2-4-305(9),  
8 the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the proposed  
9 rule is adopted, the proposed rule or portion of the proposed rule objected to is not effective until the day after  
10 final adjournment of the regular session of the legislature that begins after the notice proposing the rule was  
11 published by the secretary of state; unless, following the committee's objection under 2-4-406(1):

12 (i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted; or

13 (ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the  
14 committee members, as communicated in writing to the committee presiding officer and staff, make it comply with  
15 the committee's objection and concerns.

16 (5) An agency may not enforce, implement, or otherwise treat as effective a rule proposed or adopted  
17 by the agency until the effective date of the rule as provided in this section. Nothing in this subsection prohibits  
18 an agency from enforcing an established policy or practice of the agency that existed prior to the proposal or  
19 adoption of the rule as long as the policy or practice is within the scope of the agency's lawful authority."

20  
21 **Section 3.** Section 2-4-311, MCA, is amended to read:

22 **"2-4-311. Publication and arrangement of ARM.** (1) The secretary of state shall compile, index,  
23 arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule,  
24 and publish in the appropriate format all rules filed pursuant to this chapter in the ARM. The secretary of state  
25 shall supplement, revise, and publish the ARM or any part of the ARM as often as the secretary of state considers  
26 necessary. The secretary of state may include editorial notes, cross-references, and other matter that the  
27 secretary of state considers desirable or advantageous. The secretary of state shall publish supplements to the  
28 ARM at the times and in the form that the secretary of state considers appropriate.

29 (2) The ARM must be arranged, indexed, and ~~printed~~ published or duplicated in a manner that permits  
30 separate publication of portions relating to individual agencies. An agency may make arrangements with the

1 secretary of state for the printing or electronic distribution of as many copies of the separate publications as it may  
2 require. The secretary of state may charge a fee for any separate printed or electronic publications. The fee must  
3 be set and deposited in accordance with 2-15-405 and must be paid by the agency."

4  
5 **Section 4.** Section 2-4-313, MCA, is amended to read:

6 **"2-4-313. Distribution, costs, and maintenance, and fees.** (1) The secretary of state shall distribute  
7 copies of the ARM and supplements or revisions to the ARM to the following in an electronic format unless a hard  
8 copy is requested:

- 9 (a) attorney general, one copy;  
10 (b) clerk of United States district court for the district of Montana, one copy;  
11 (c) clerk of United States court of appeals for the ninth circuit, one copy;  
12 (d) county commissioners or governing body of each county of this state, for use of county officials and  
13 the public, at least one but not more than two copies, which may be maintained in a public library in the county  
14 seat or in the county offices as the county commissioners or governing body of the county may determine;  
15 (e) state law library, one copy;  
16 (f) state historical society, one copy;  
17 (g) each unit of the Montana university system, one copy;  
18 (h) law library of the university of Montana-Missoula, one copy;  
19 (i) legislative services division, two copies;  
20 (j) library of congress, one copy;  
21 (k) state library, one copy.

22 (2) The secretary of state, each county in the state, and the librarians for the state law library and the  
23 university of Montana-Missoula law library shall maintain a complete, current set of the ARM, including  
24 supplements or revisions to the ARM. The designated persons shall also maintain the register issues published  
25 during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers. An entity  
26 required by this section to maintain a copy or set of the ARM and supplements or revisions to it and a copy of the  
27 register complies with this section if it provides access to an electronic version of the current ARM and the current  
28 year's issues of the register or the current year's issue and register archives for the prescribed period of time.

29 (3) The secretary of state shall make printed or electronic copies of and subscriptions to the ARM and  
30 supplements or revisions to the ARM and the register available to any person for a fee set in accordance with

1 subsection ~~(5)~~ (6). Fees are not refundable.

2 (4) The secretary of state may charge agencies a filing fee for all material to be published in the ARM  
3 or the register.

4 (5) In addition to the fees authorized by 2-4-311 and 2-4-312 and other fees authorized by this section,  
5 the secretary of state may charge fees for internet or other computer-based services requested by state agencies,  
6 groups, or individuals.

7 ~~(5)(6)~~ The secretary of state shall set and deposit the fees authorized in this section in accordance with  
8 2-15-405."

9 - END -